

# **COUNCIL ON DEVELOPMENT FINANCE**

**September 26, 2016**

## **PUBLIC HEARING 425**

### **THOSE PRESENT:**

Mr. Andrew Lubin, Chairman  
Honorable Nancy Cook  
Senator Nicole Poore  
Mr. Richard Rowland  
Rep. Bryon Short  
Director Bernice Whaley  
Mr. Dave Archer  
Ms. Kimberly Cruz

Mrs. Jodie Green  
Mrs. Leilani Decena-Shepherd  
Mr. Lawrence Lewis, DAG  
Mr. Tim McLaughlin  
Mrs. Jordan Schulties  
Mrs. Karen Smith  
Mr. Joe Zilcosky

### **ALSO PRESENT:**

#### **Delaware Military Academy –**

Mr. Ed Capodanno, Chair of the Board  
Mr. Anthony Pullella, Commandant  
Mr. Kenneth Gatson, CFO  
Ms. Silvia Shin, Esq., Saul Ewing LLP  
Mr. Dan Silva, Associate Director, Fairmount Capital Advisors, Inc.  
Bill Foley, WSFS

#### **Delaware State University –**

Dr. Teresa Hardee, CFO & COO, Dept. of Finance and Administration  
Ms. Denese Lindsey, CPA & Associate VP for Budget & Finance  
Ms. Lafeisha Cannon, Controller  
Ms. Emilie Ninan, Esq., Ballard Spahr  
Ms. Sandra Kurtz Baxter, Managing Director, Fairmount Capital Advisors, Inc.  
Mr. Julius Coursey, CFA, Managing Director, Wells Fargo Securities

Erin Innes, Office of Management and Budget  
Art Jenkins, Office of the Controller General

**LOCATION:** Haslet Armory, Dover, DE

**TIME:** 9:10 a.m.

### **CALL TO ORDER:**

The meeting was called to order at 9:10 a.m. by Council Chairman Mr. Andrew Lubin, on Monday, September 26, 2016.

### **OLD BUSINESS:**

Mr. Andrew Lubin made a motion that the minutes of the June 27, 2016 Council on Development Finance meeting be approved as presented. Mr. Richard Rowland approved the motion; Senator Nicole Poore seconded the motion, which was then adopted by unanimous vote.

**NEW BUSINESS:**

Mr. Lubin recommended an amendment to the agenda. He suggested to start the meeting with the Department of Justice to discuss the terms and conditions of conduit financing. The second presentation will be from the Delaware Military Academy and the meeting will end with Delaware State University.

**Public Discussion – Amendments to Bond Regulations** – Deputy Attorney General Larry Lewis started the discussion by referring to a letter dated September 20, 2016 to Mr. Lubin regarding conduit bond financing. Mr. Lewis mentioned that the letter was a follow-up from a Council discussion a few months ago, pertaining to the process of evaluating revenue bonds. He said the Governor recently enacted a Review of Regulations through Executive Order, with the purpose of assessing existing state regulations, including revenue bonds. Mr. Lewis recommended an amendment to Delaware's revenue bond financing regulation. This change will permit the Chairperson of the Delaware Economic Development Authority to consult a qualified independent financial advisor in evaluating bond projects that are non-rated or below investment grade. Mr. Lewis assured the Council that the amendment will allow schools and other projects to receive extended financing. This proposed modification will also give the Chairperson the discretion not to use an independent financial advisor if the offering is rated above investment grade or if a bank is underwriting the offering. Mr. Lewis expressed that the amendment is a balanced approach and strongly urged the Council to consider recommending that DEDA adopt the policy

In addition to the letter in the Council's packet, Mr. Lewis said there is a document regarding post-issuance procedure. He explained that the purpose of this policy is to outline DEDA's role and compliance procedures once the bonds have been issued. He said that the agency has very detailed set of procedures that are 15-pages long. The revisions to the post-issuance policy considered the National Association of Bond Lawyers training seminars and analyzed the Delaware Health Facilities Commission, which is very similar to DEDA's revenue bond issuance. He said they have a very simplified process that obligates the borrower to certify continuing compliance.

Mr. Lewis said these two recommendations will help improve the process of evaluating bond projects. He opened the floor to questions.

Mr. Richard Rowland asked if it is mentioned in the application or the regulation that the applicant will bear the costs of the independent financial advisor. Mr. Lewis responded by saying that it is not clear in the regulation and that he could include it in the regulation and the application.

Mr. Lubin commented that he prefers to see it mentioned in the application, not the regulation. He asked DEDO's Business Finance Specialist, Kimberly Cruz, if the language is captured in the application. Ms. Cruz stated that it is not currently reflected in the application; however, DEDO is in the process of updating the applications and will incorporate it.

Mr. Lubin asked if there are any other comments regarding the bond procedures and post-issuance policy.

Senator Nancy Cook asked for clarification to the references of "Secretary" in the documents. She explained that in reference to DEDO, the agency has a Director not a Secretary. Mr. Lewis replied that the title Secretary is the designation for the statute.

Chairman Lubin called for a motion regarding the recommendations for the application procedure and the post-issuance policy.

**Motion Made By: Mr. Richard Rowland**  
**Seconded By: Senator Nicole Poore**

Chairman Lubin asked if there were any public comments and there were none.

**MOTION:** After careful consideration, the Council moved to recommend that DEDA initiate a rulemaking to amend the existing bond regulations to require independent financial review for bond offerings below investment grade and to adopt a revised, simplified post-issuance compliance policy.

**Approved By Vote of 5 to 0.**

**Delaware Military Academy ("DMA" or the "Applicant")** – The Applicant is requesting the Delaware Economic Development Authority ("DEDA") act as a conduit issuer of tax-exempt bonds not to exceed \$5,500,000. The proceeds of the revenue bonds will be applied to make a loan to DMA for one or more of the following purposes: (i) financing all or a portion of the costs of the construction of the capital project; (ii) funding of capitalized interest during construction; (iii) funding a debt service reserve fund deposit; and/or (iv) financing various costs incidental to the financing, including costs of issuance. DMA will use a portion of the proceeds to finance the construction and equipping of a 28,000-square-foot multi-purpose dome facility which includes an athletic center, eight classrooms, an athletic field, and approximately 180 parking spots. WSFS bank will be the "bond purchaser" and will hold the bond as the sole buyer/investor.

Mr. David Archer, DEDO's New Castle County Business Development Leader, presented this request to the Council. He began his presentation by providing a brief description of the Delaware Military Academy. He said that it is a Delaware nonprofit corporation that was authorized by the Red Clay Consolidated School District to operate as a charter school in May 2002. He added that DMA is the first all-Navy Junior ROTC charter school in the United States, which strives to impact future generations by providing an exceptional

education with a math and science emphasis. He also said that the curriculum of the school is aligned with the state of Delaware's Content Standards developed by the Department of Education.

Mr. Archer explained that in its first year, DMA served grades 9 and 10 and enrolled 306 students. Now, the school serves grades 9-12 and services its maximum capacity of 560 students while employing 44 full-time employees. He believed this expansion would allow the school to accept more students, which would potentially create more full-time teaching positions. Furthermore, he stated that the construction of the project will provide projects for area contractors and is expected to take place over approximately one year.

Ms. Cruz presented the project's financial status to the council. She informed the committee that DEDO staff reviewed DMA's audited financial statements for fiscal year 2014-2015; historical and projected revenues and expenditures for FY 2013-2021; and its monthly financial reports of revenue and expenditures for the current FY ending June 30, 2016.

She reported that in 2015, DMA had a net position deficit of \$917,000, which was a net position decrease of \$935,000, compared to 2014's net surplus of \$18,000. She also mentioned that its margin declined from 9% to -6%. Ms. Cruz's analysis showed that during this period, total expenses were in the amount of \$7.3MM, which grew by 17% from 2014. She explained that revenue in the amount of \$6.4MM, grew slightly less than 1% because of an increase in state aid related to enrollment growth.

She added that cash and pooled cash measured 25% of the total asset base for FY 2015 and increased by 76%, totaling \$3.9MM. She stated that net bonds payable, in the amount of \$13.6MM, were up 25% from FY 2014 and constituted 84% of DMA's total liability base. According to Ms. Cruz, as of the end of FY 2015, DMA's total net debt outstanding measured \$14.5MM, which consisted of notes payable and DEDA series 2014 bonds with a face value of \$13.6MM.

She believes that DMA's liquidity is satisfactory. She said this was due to the fact the Applicant had working capital of \$2.9MM for FY 2015, which more than doubled from FY 2014. Ms. Cruz emphasized that DMA's computed current ratios were 3.82 for FY 2015, compared to 2.59 for FY 2014. She said improvements in these ratios were attributable to a 76% increase in cash. She also stated that the Applicant's debt-service coverage ratio for the period strengthened from 1.67 for FY 2014 to 2.00 for FY 2015 due to refinancing of the 2008 bonds.

For projections, she said DMA expects to have the capacity to cover its obligations through 2021, with total debt outstanding projected to decrease and positive net revenue, after debt service forecasted. She added that DMA anticipates it will have 169 days cash-on-hand and a debt service coverage ratio of 1.34 by 2021. Overall, she believes DMA's financial condition is adequate. She said the Applicant demonstrated that it has the capacity to plan for capital costs; cover current and anticipated debt levels; and manage revenues and expenditures to maintain adequate operational health. However, she added

that DMA must continue to grow revenues and work to reduce costs to remain financially sustainable.

Mr. Archer, asked Sylvia Shin from Saul Ewing LLP to provide an overview of the bonds involved in this project. Ms. Shin said that these bonds are similar to any conduit financing and the tax – exempt financing that DEDA provides. She clarified that the general obligation of the state is not pledged for these bonds for repayment. School revenues is what is pledged to pay the bondholder.

Mr. Archer said DEDO staff recommends approval of the Delaware Economic Development Authority acting as a conduit issuer of tax-exempt bonds, subject to WSFS bank credit approval, not to exceed \$5,500,000 on behalf of Delaware Military Academy.

Mr. Lubin asked the council if they had additional questions and comments for this application.

Mr. Richard Rowland asked DMA representatives if its 2016 financial statements have been audited. DMA's Chief Financial Officer, Kenneth Gatson, responded that the audit is in its final stages for some minor changes and rewording. Mr. Rowland also asked if there will be any significant changes between the unaudited and audited versions. Mr. Gatson reassured him that there were no major modifications.

Mr. Lubin asked how the \$5.5MM financing and refinancing will impact DMA's annual cost of debt service. Mr. Dan Silva of Fairmount Capital Advisors, Inc. replied that prior to the financing, the school pays approximately \$893,000 in annual debt service. He said that is going to decrease. He explained that this past fiscal year, DMA paid down a \$700,000 loan, which was used to purchase the property where the project will be located, naturally decreasing the repayment of that loan. Taking on the additional \$5.5MM financing, DMA projects just over \$1.04MM dollar in annual debt service. Mr. Lubin stated that is approximately a \$150,000 incremental increase. Mr. Silva agreed. Mr. Lubin asked if DMA can manage and maintain its ratios. Mr. Silva said yes.

Mr. Lubin asked about the term of the WSFS loan. Mr. Silva replied that DMA has two proposals on hand. He said one is a shorter term construction loan and the other is a longer term loan, depending on alternative financing from USDA, which they anticipate hearing from this month. The term of the short-term loan is 18-months, which will bridge them to the USDA financing. And the longer term loan would be a 10-year commitment, with a 20-year amortization. Mr. Silva assured Mr. Lubin that it factored in the \$1.04MM.

Mr. Lubin asked the council if there were any comments or questions regarding the application.

Chairman Lubin restated the applicant's funding request and called for a motion.

**Motion Made By: Mr. Richard Rowland**

**Seconded By: Senator Nicole Poore**

Chairman Lubin asked if there were any public comments and there were none.

**MOTION:** After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: financing the Project will meet a need for assistance in financing the facilities and activities of the Applicant, as an exempt person within the meaning of 29 *Del. C.* §5052(8), in order to contribute to the prosperity, health and general welfare of the citizens of Delaware; and further that the Council shall recommend to Mrs. Bernice Whaley, Chairperson, The Delaware Economic Development Authority, approval of the request that the Delaware Economic Development Authority (DEDA) act as a conduit issuer of tax-exempt bonds, subject to WSFS bank credit approval, not to exceed Five-Million-Five-Hundred-Thousand-Dollars (\$5,500,000) and contingent upon the approval remaining in effect through and including September 25, 2017.

**Approved By Vote of 5 to 0.**

Mr. Lubin confirmed that DMA's application and funding are compliant with the new regulations of the Applicant's procedures.

**Delaware State University ("DSU" or the "Applicant")** – The Applicant is requesting The Delaware Economic Development Authority ("DEDA") act as a conduit issuer of tax-exempt bonds not to exceed \$51,000,000. The proceeds of the revenue bonds will be applied to make a loan to DSU for one or more of the following purposes (collectively, the "Project"): (i) the advance refunding of The Delaware Economic Development Authority Revenue Bonds (Delaware State University Project) Series 2007, which originally financed a student center (including bookstore, copy center, study areas, meeting rooms, and administrative offices), a swimming pool, and a Student Wellness/Recreation Center (including recreational basketball courts, a strength and conditioning center and related health and fitness equipment); (ii) the funding of any required reserve funds relating to the Bonds; and (iii) the costs of issuance and any credit enhancement of the Bonds. DSU will use a portion of the proceeds to refinance its 2007 bond which was used to build the new student center, swimming pool, and student wellness/recreation center.

Mr. Joe Zilcosky, DEDO's Kent County Business Development Leader, presented this request to the Council. He began his presentation by providing a brief description of Delaware State University. He said the university is one of America's first land-grant and historically black institutions. He added that DSU awarded the following degrees to its graduates during the spring 2016 commencement ceremonies. Undergraduate degrees were awarded to 554 graduates, master's degrees were awarded to 61 graduates, and 13 graduates received doctoral degrees. Mr. Zilcosky said the commencement kicked off the school's year-long celebration of DSU's 125th anniversary.

He explained that the university received a bond in 2007 bond, which financed a new student center, swimming pool, and student wellness/recreation center. He added that the 54,000-square-foot Student Wellness and Recreation Center and swimming pool were finished in 2009. He emphasized that the facility won the National Intramural-Recreational Sports Association's 2010 Outstanding Sports Facility Award. In addition, the student center was completed in 2010 and dedicated in 2011. Mr. Zilcosky described the new student center as having a bookstore, an event room, a dining area, a game room, facilities for campus organizations to meet, and offices on the third floor. He said that these facilities helped welcome in a new era for student life on DSU's main campus.

He stated that Fairmount Capital Advisors, a financial firm, projects that the advance refunding of the 2007 Bonds at the expected interest rate of 3.27% would yield a present-value savings of approximately \$4.2MM (or \$6.1MM over the life of the bonds).

Ms. Cruz presented the project's financial status to the Council. She informed the committee that DEDO staff reviewed DSU's audited financial statements for fiscal years ended in June 30, 2013, 2014, and 2015, as well as pro-forma financial statements through 2018. She said that DSU reported year-over-year a decline in net position with a reduction in net position of \$4.4MM by fiscal year end 2015. She attributed this decrease to increased expenses related to property acquisition, depreciation and bad debt reserves, partially off-set by decreases in instructional, student service, operational, and maintenance expenses. She mentioned that revenue contracted year-over-year as a result of the expansion of its scholarship program and downturn in government grants and contracts. She added that this downward trend was offset by increased growth in auxiliary enterprise revenue sourced from property acquisition, and its athletics program.

She stated that DSU's current assets decreased by \$9.1MM for FY 2015 due to additional construction project payments. She said that its current liabilities decreased by \$1.8MM; while, long term liabilities increased by \$2.5MM, which were chiefly attributable to Series 2014 bond issuance to finance construction and acquisition costs.

According to Ms. Cruz, the increase in long-term liabilities was balanced in part by a decrease in net pension liability. She explained that as of June 30, 2015, DSU owed notes payable totaling \$1.5MM to the Delaware Economic Development Authority and the Delaware River and Bay Authority. She said its debt related to multiple series of revenue bonds, measured \$125MM, of which series 2007, 2012 and 2014 were issued through DEDA, with an annual debt service of \$8.1MM.

She mentioned that DSU's liquidity was positive, with some softening noted. Her research showed that the working capital calculation consistently declined from \$30.1MM to \$14.5MM between 2013 and 2015. She also stated that the current ratio declined from 2.51 to 1.92, but compared favorably to the industry median of 1.90. She said the shrinkage in these ratios were chiefly related to a decrease in cash and funds available from the state treasurer.

She added that DSU's calculated debt service coverage ratio deteriorated from 2.10 to .76 by FY end 2015. She said this weakness is mitigated by DSU's debt service reserve fund in the amount of \$8.3MM for FY 2015. That is equivalent to the maximum annual debt service on all bonds.

Ms. Cruz reported that by FY 2018, DSU projects operating income of \$7.9MM, stemming from anticipated growth in revenue in the amount of \$7.7MM and expected reduction in expenses, measuring just under \$1MM.

While DSU's current overall financial position could be improved, it has demonstrated its sustainability and that it is capable of covering current and anticipated debt levels. She said the school is committed to taking action to improve operational health, by growing revenue and reducing expenses, to remain a viable educational institution.

Mr. Zilcosky asked Ms. Emilie Ninan of Ballard Spahr to discuss the bonds.

Ms. Ninan introduced herself as partner of Ballard Spahr and shared that she is serving as bond council for this project. She introduced Ms. Sandra Kurtz Baxter of Fairmount Capital Advisors, Inc. and Mr. Julius Coursey of Wells Fargo Securities, who were both on the phone.

Ms. Ninan mentioned that DSU qualified for bonds issued through DEDA as a 501 (c) 3 organization. She said there is no limit on the amount of (c) 3 bonds that the authority can issue in a calendar year. She added that the bonds are sold strictly on DSU's A- credit and they are expected to maintain that credit through this financing. She said there is no credit of the state or DEDA being pledged. She explained that there is no taxing power of the state that is being pledged toward the repayment. She said it is strictly on the credit of DSU. She also said that there is a commitment from Wells Fargo to purchase the bonds and sell them.

In conclusion, Mr., Zilcosky stated that the staff recommends approval of the Delaware Economic Development Authority acting as a conduit issuer of tax-exempt bonds, not to exceed \$51,000,000 on behalf of Delaware State University. Bond proceeds are to be used for advance refunding of series 2007 Delaware Economic Development Authority revenue bonds, the funding of any required reserve funds relating to the bonds, and associated issuance costs.

Mr. Zilcosky introduced Dr. Teresa Hardee, CFO of the Department of Finance and Administration at DSU, who joined the meeting by phone.

Dr. Hardee thanked everyone for allowing her to speak on behalf of DSU from Chicago, where she is attending a conference focused on higher education sustainability. Dr. Hardee also thanked DEDO for allowing DSU to present the 2007 bond refunding project before the council and complimented the staff's hard work. She shared with the council some of DSU's recent accomplishments. She mentioned that DSU was named the 1890 Land-Grant University of the Year and one of its students was awarded the 1890 Mills Student of the



Year for completing his Ph.D. in chemistry. She said the last time the university presented at CDF, they discussed the Optical Science Center for Applied Research, which she said was built on time and under budget. She added that the building is currently being used for research. Dr. Hardee also added that DSU's partnership with the Bill and Melinda Gates Foundation is strong and the university was recently rated the fourth best public HBCU (Historically Black Colleges and Universities) in the nation. In addition, DSU claimed that it has the largest freshman class they have ever had and its retention rate is at an all-time high. Dr. Hardee said the refunding will allow DSU to become the one of the best higher education institutions that support and ensure access affordability and college completion of all its students. She thanked the council again for reviewing this bond, which she stressed is very important to the university.

Mr. Lubin thanked Dr. Hardee for her comments. He then asked if anyone had any questions or comments for the applicant requesting funding and refunding; there were none.

Mr. Lubin asked if there is a recommendation to proceed and recommend to the Secretary for DEDA the \$51MM funding and refinancing.

**Motion Made By: Senator Nancy Cooke**  
**Seconded By: Senator Nicole Poore**

Chairman Lubin asked if there were any public comments and there were none.

**MOTION:** After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: financing the Project will meet a need for assistance in financing the facilities and activities of the Applicant, as an exempt person within the meaning of 29 *Del. C.* §5052(8), in order to contribute to the prosperity, health and general welfare of the citizens of Delaware; and further that the Council shall recommend to Mrs. Bernice Whaley, Chairperson, The Delaware Economic Development Authority, approval of the request that the Delaware Economic Development Authority (DEDA) act as a conduit issuer of tax-exempt bonds, not to exceed Fifty-One-Million Dollars (\$51,00,000), subject that bond proceeds are used for advance refunding of series 2007 Delaware Economic Development Authority revenue bonds; the funding of any required reserve funds relating to the bonds; and associated issuance costs and contingent upon the approval remaining in effect through and including September 25, 2017.

**Approved By Vote of 5 to 0.**

Mr. Lubin confirmed that DSU's application and funding are compliant with the new regulations of the Applicant's procedures because a bank institution will be purchasing the bonds in its entire amount.

**ADJOURNMENT**

The meeting adjourned at 9:40 a.m.

Respectfully submitted,  
Leilani Decena-Shepherd, Portfolio Administrator

*LDS*

cc: Members of the Council on Development Finance  
Director Bernice Whaley  
Lawrence Lewis, DAG

The next CDF meeting is scheduled for Monday, October 24, 2016 at 9:00 a.m. at the Buena Vista Conference Center on 661 S. DuPont Hwy in New Castle, Delaware.